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<b>To:</b>	Examiner: Patricia A. Leith Group Art Unit: 1654	<b>From:</b>	Raymund F. Elch, Ph.D. Reg. No. 42,508
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<b>No. of Pages:*</b>	4	<b>Date:</b>	September 13, 2004
<b>Re:</b>	Serial No. 09/746,921	<b>File:</b>	2103.013700

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PATENT

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

KEVIN J. THORNE

Serial No.: 09/746,921

Filed: December 22, 2000

For: COMPOSITION AND PROCESS FOR  
BONE GROWTH AND REPAIR

Confirmation No.: 2764

Group Art Unit: 1654

Examiner: Patricia A. Leith

Attorney Docket: 2103.013700/RFE  
(SBI-073-US)

CUSTOMER NO. 45488

RESPONSE TO ELECTION REQUIREMENT  
DATED AUGUST 13, 2004MAIL STOP AMENDMENT  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450CERTIFICATE OF FACSIMILE  
37 C.F.R. § 1.6(d)

I hereby certify that this paper is being facsimile transmitted to MAIL STOP AMENDMENT, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, facsimile number 1-703-872-9306, on this 13th day of September, 2004.

  
Cynde Meinhardt

Sir:

This paper is submitted in response to the Election Requirement dated August 13, 2004, for which the date for response is September 13, 2004.

It is believed that no fee is due; however, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to this document, the Director is authorized to deduct said fees from Williams, Morgan & Amerson, P.C. Deposit Account No. 50-0786/2103.013700RFE.

In the Election Requirement, the Examiner stated election of a single disclosed species of collagen is required. Applicants elect Type I bovine collagen. Claims 1-8, 10, 24-29, and 32-48 (pending claims under consideration), as well as claim 9, which is pending but withdrawn from consideration, read on Type I bovine collagen. Claims 1-8, 10, 24-29, 32-34, 36-40, and 42-48 are generic, as is claim 9.

The Examiner suggested that, if Applicants elected Type I bovine collagen, they should further elect Type I bovine tendon atelopeptidecollagen. Applicants respectfully disagree with and traverse this suggestion. They respectfully submit Type I bovine collagen encompasses a reasonable number of species of collagen under 37 CFR 1.141, 1.146. Further, 37 CFR 1.146 specifies that election of a species may only be required in the first action on an application. The paper mailed on August 13, 2004 is not the first action on this application, given that a prior office action was mailed on November 18, 2003.

It should be noted that Applicants do *not* speak, either way, as to whether Type I bovine tendon collagen or Type I bovine tendon atelopeptidecollagen is or is not a nonobvious variant of Type I bovine collagen.

If the Examiner would not consider Type I bovine collagen to be a sufficiently narrow species, Applicants would provisionally elect Type I bovine tendon collagen. If the Examiner would not consider Type I bovine tendon collagen to be a sufficiently narrow species, Applicants would provisionally elect Type I bovine tendon atelopeptidecollagen. However, such provisional elections are with partial traverse for the reasons given above.

The Examiner is invited to contact the undersigned patent agent at (713) 934-4065 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON, P.C.  
CUSTOMER NO. 45488

September 13, 2004



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AGENT FOR APPLICANT

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